

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10932 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether  
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of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil  
Judge? yes

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ARASURI AMBAJIMATA MANDIR DEVSTHAN TRUST

Versus

JOITABHAI A PATEL,SHRAMJIVI GENERAL WORKSERS UNION  
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Appearance:

MR JD AJMERA for Petitioner

MR.V.B.GARANIA for Mr.D.A.Bambhania Addl.Govt.Pleader  
for Respondent Nos. 2 and 3.  
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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 03/07/96

ORAL JUDGEMENT

The respondent joined the services of the  
petitioner trust i.e. Arasuri Ambajimata Mandir Devsthan  
Trust on 23.9.1974 and he was then appointed as Special  
Development Officer with effect from 1.4.1988 and at that  
time he was given the salary of Rs. 2371/- p.m. Later

on with effect from 1.6.1989 his salary was at Rs. 2586/-p.m. It is the case of the petitioner that respondent No.1 had resigned in January, 1991 at that time his salary was Rs. 3147/- and therefore he was drawing the salary more than Rs.2500/-p.m. after 1.6.1989 and at the time when he resigned in January, 1991. The respondent claimed gratuity and in this regard it appears that the Administrator of the petitioner trust sent a letter dated 15.4.1991 to Law Department of the Government of Gujarat. The letter dated 13.11.1991 was sent to the Administrator of the petitioner trust by Deputy Secretary to the Government in the Law Department informing the Administrator of the petitioner trust that the employee is entitled to the gratuity when he retires. The respondent had not retired but had tendered his resignation and he was not a part time employee and therefore he was not entitled to gratuity in accordance with the pension rules of the Government of Gujarat. The General Secretary of the Shramjivi General Workers' Union then sent a letter dated 26.12.1991 to the Administrator of the petitioner trust with duly filled in form prescribed under the Gratuity Act requesting the payment of gratuity in accordance with law for the respondent. The gratuity was not paid to the respondent and the respondent thereupon moved an application before the Controlling Authority under the Payment of Gratuity Act. The Controlling Authority under the Payment of Gratuity Act, 1972 vide his order dated 30.6.1992 rejected the application of the respondent holding that he was not entitled to gratuity because he had resigned. The respondent moved Review Application before the Controlling Authority but the same was rejected on 13.10.1992 on the ground that the review had been moved after the expiry of the period of thirty days. The respondent therefore filed Appeal No. 39 of 1992 before the Appellate Authority, Ahmedabad under the Payment of Gratuity Act, 1972. The Appellate Authority set aside the order dated 13.10.1992 and remanded the matter to the Controlling Authority vide order dated 13.10.1993. The Controlling Authority under the payment of Gratuity Act, this time passed an order holding that the petitioner was entitled to sum of Rs. 21,366/- against the gratuity and interest @ 9%. A copy of this order annexed to the petition does not show the date of the order but it appears that the order must have been passed at least prior to 10.1.1994 because 10.1.1994 is the date on which the appeal was preferred by the Administrator of the petitioner trust before the Appellate Authority under the Payment of Gratuity Act and the Appellate Authority has passed the order dated 31.7.1995 rejecting the Appeal and sustaining the order passed by the Controlling Authority.

Against this order dated 31.7.1995 passed by the Appellate Authority read with the order which was passed by the Controlling Authority under the Payment of Gratuity Act in the remanded proceedings, the present Special Civil Application has been filed by the petitioner trust. Mr.J.D.Ajmera, learned counsel for the petitioner trust submitted that whereas the respondent was a full time permanent employee of the trust and whereas he had resigned from the services of the petitioner trust he was not governed by the provision of the Payment of Gratuity Act and was not governed by the definition of the employee given in section 2(e) of the Payment of Gratuity Act, 1972. The learned counsel was at pains to submit that the respondent was governed by the rules framed in this regard by the Government of Gujarat because the petitioner trust is controlled by the State Government and the Government Rules are applicable to the employees of the trust. Mr.Ajmera laid stress on the definition of 'employee' given in section 2(e) of Payment of Gratuity Act and submitted that the holders of the post under the State Government or the Central Government who are governed by any other Act or by any Rules providing for the payment of gratuity are excluded from the definition of employee under section 2(e) of the Payment of Gratuity Act, and therefore the respondent had no locus standi to claim the gratuity under the Payment of Gratuity Act, 1972 and the Controlling Authority while passing the order in the remanded proceedings in favour of the respondent and the Appellate Authority while rejecting the appeal of the petitioner trust and sustaining the order of the Controlling Authority passed in remanded proceedings committed grave illegality in granting gratuity to the respondent. Mr.Ajmera placed reliance to the Government Resolution dated 15.9.1990, copy of which has been annexed to the petition as Annexure 'A' and Rule 26 framed by the petitioner trust itself.

The affidavit-in-reply has been filed on behalf of the respondent stating therein that the Government Resolution dated 15.9.1990 had not been adopted by the petitioner trust and further that the petitioner trust is an establishment under the provision of Payment of Gratuity Act, 1972 as the Government Rules were not applicable to the petitioner trust and merely because he had resigned he cannot be deprived of the amount of gratuity. It has also been stated in para 6 of the affidavit-in-reply dated 27.6.1996 that the petitioner trust had paid gratuity amount to one of its employees Mr.G.K.Raval who had resigned from the petitioner temple trust and as such the denial of gratuity to the respondent is discriminatory. It has been further stated

that he had appeared before the Competent Authority and his examination in chief was conducted on 15.7.1993 before the Competent Authority but the petitioner trust did not choose to cross-examine him and in support of this averment, a copy of the document Annexure 'I' has been filed. I have considered the pleadings of the parties and heard the learned counsel and it may be mentioned that the learned counsel for respondent Nos. 2 and 3 have supported the orders passed by the Controlling Authority and the Appellate Authority and Mr. Garania has taken a categorical stand that though the rules framed by the Government of Gujarat are applicable to the employees of the petitioner trust and the petitioner trust is controlled by the Government of Gujarat the respondent did not hold any post under the Government of Gujarat.

On the facts of this case, it is clearly made out that the respondent was in the service of the petitioner trust and he did hold a post in the service of the petitioner trust which can be said to be controlled by the State Government while being a temple trust in the State of Gujarat, nevertheless, it is clear that the post which was held by the respondent is not a post under the State Government and therefore it cannot be said that the respondent is not an employee within the meaning of section 2(e) of the Payment of Gratuity Act, 1972. The holders of the post under the Central Government or a State Government and governed by any other Act or by any Rules under the Payment of Gratuity Act, are excluded from the definition of employee under the Payment of Gratuity Act, 1972, and therefore before exclusion of any employee is sought from the definition of employee under section 2(e) on the ground that he is governed by any other Act or by any other Rules providing for the payment of gratuity, it must be first established that the employee sought to be governed by such Act or Rules holds post either under the State Government or Central Government. In this case it being transparently clear that the post held by the respondent is not a post under the State Government it is of no significance if the Government Rules are made applicable by the resolution to the employees of this temple trust which is controlled by the Government of Gujarat. In this view of the matter, the Government Resolution dated 15.9.1990 cannot have the overriding effect over an Act passed by the parliament and such resolution or rules in this regard framed by the Government or by a temple trust itself to which the reference has been made by Mr. Ajmera cannot defeat or over ride the central legislation. Once it is held that the respondent is covered by the definition of 'employee' under section 2(e) of the Payment of Gratuity Act, 1972 he is entitled for gratuity in accordance with the provisions of the Payment

of Gratuity Act, 1947 and under sections 4 and 4(b) even if the employee has resigned he is entitled to gratuity and hence mere fact that the respondent has resigned from the service of the temple trust cannot be pleaded as any impediment against the entitlement of gratuity in his favour. Besides this on the last date when Mr.Ajmera had sought time on 1.7.1996, the learned counsel for the respondent who is not present today before this court had cited 1977(II) LLJ Pg.127, [Hindustan Brown Bovari Ltd. Baroda Vs. C.A.Panchal], 27(2) GLR Pg.983 [Ahmedabad Panjarapole Sanstha Vs. Miscellaneous Mazdoor Sabha And Others] and decisions rendered by this Court in Special Civil Application No. 342 of 1995 decided on 25.1.1996 and Special Civil Application No. 10106 of 1995 decided on 5.2.1996 and submitted that the orders passed by the Controlling Authority in the remanded proceedings as sustained by the Appellate Authority in its order dated 31.7.1995 had been correctly passed in favour of the respondent.

I do not find any basis to interfere with the order passed by the Controlling Authority in the remanded proceedings and the order passed by the Appellate Authority under the Payment of Gratuity Act on 31.7.1995 and therefore this Special Civil Application must fail and is hereby dismissed. Rule is hereby discharged. No order as to costs.

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